

Rocky Mountain Insulating Company and International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 28. Cases 27-CA-7002 and 27-CA-7241

26 August 1983

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 11 February 1982 the National Labor Relations Board issued its Decision and Order¹ in the above-entitled proceeding in which it concluded, *inter alia*, that Respondent had violated Section 8(a)(5) and (1) of the Act by repudiating and failing to honor the memorandum and existing collective-bargaining agreement between Respondent and the Union. The Board ordered Respondent to abide by the memorandum and existing collective-bargaining agreement and to make whole its employees. On 18 June 1982 Respondent entered into a stipulation with counsel for the General Counsel wherein, *inter alia*, Respondent agreed that it had no objection to the Board's 11 February 1982 Order except to the computation of the amounts of money due to the funds involved. On 27 July 1982 the Regional Director for Region 27 issued and duly served on Respondent a backpay specification and notice of hearing alleging the backpay, fringes, and benefits due under the Board's Order. On 3 December 1982 counsel for the General Counsel filed with the Board a motion to transfer proceedings to the Board and for summary judgment. Subsequently, the Board on 10 December 1982 issued an order to transfer the proceeding to the Board and a Notice To Show Cause. Respondent filed on 20 December 1982 a reply to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides, in pertinent part, as follows:

(b) *Contents of the answer to specification.*— . . . The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

¹ 260 NLRB 163.

Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to the specification.*— . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

Respondent's reply to the Notice To Show Cause, after conceding the appropriateness of the backpay specification as to employee and union member Glen Svore, presents the following assertion:² None of the other employees listed in the

² Respondent also asserts that, with the exception of Glen Svore, "the employer paid the equivalent of the fringe benefits and other benefit payments which would have been made had they been union members directly to said employees in the form of wages in excess of the minimum wage required under the union contract." Respondent provided no further explanation of its argument. Certainly, this matter is within the knowledge of Respondent and its failure to deny the specification in the manner required by Sec. 102.54(b) or to explain adequately its failure to do so requires that the allegations be deemed to be true in accord with Sec. 102.54(c). See *Mazda South*, 252 NLRB 791 (1980).

Moreover, we would grant the General Counsel's Motion for Summary Judgment on the ground that Respondent did not file an answer to the backpay specification as required by Sec. 102.54(c) of the Board's Rules and Regulations, Series 8, as amended. According to the Motion for Summary Judgment, Respondent's answer was due on 11 August 1982. Thereafter, on 2 November 1982 the Regional Office advised Respondent that its answer was past due. Despite receiving an extension of time to file an answer by 29 November 1982, Respondent has failed to do so. Respondent's response to the Notice To Show Cause does not deny that it never filed an answer, nor does it offer any explanation whatsoever for its failure to take such action. Furthermore, Respondent does not contest service of the backpay specification and notice of hearing, or the granting of the extension of time to file an answer. We also conclude that the response to the Notice To Show Cause does not excuse Respondent's failure to file an answer. Therefore, in accordance with the rule set forth

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backpay specification were union members, at no time would receive any of the Union's fringe benefits, and thus no employer fringe or benefit payments are due those employees.

Respondent's reply does not challenge the accuracy of the figures in the backpay specification. And we find no issue of fact raised by, nor merit in, the arguments raised by Respondent. As to Respondent's assertion that the employees other than Svore are entitled to no fringe benefits because of their lack of membership in the Union, it is well settled that, where a union is the bargaining agent of a unit, it is the exclusive collective-bargaining representative of all the employees of the unit, whether union member or not. *Steele v. Louisville and Nashville Railroad Co.*, 323 U.S. 192 (1944); *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). The fringe and other benefit provisions of the collective-bargaining agreement which the Union here had negotiated applied to all employees in the bargaining unit regardless of union membership; if Respondent and the Union participated in a contract providing fringe benefits only for union members, it would constitute a violation of Sections 8(b)(1)(A) and 8(a)(2). *Prestige Bedding Co.*, 212 NLRB 690, 691 (1974). All employees listed in the backpay specification were members of the bargaining unit and thus were entitled to the contractual benefits which Respondent failed to pay them. Accordingly, the allegations of the backpay specification are accepted as true and we grant the General Counsel's Motion for Summary Judgment.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Rocky Mountain Insulating Company, Casper, Wyoming, its officers, agents, successors, and assigns, shall make whole Bob Hulen, Gene McCloud, Lyle McCloud, Kirk Rosty, Glen Svore, and Lewis Thomas by payment on their behalf of the amounts opposite their names, respectively, to the funds named below. Interest thereon shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).³ Respondent shall also

above, we find that the allegations of the backpay specification are deemed to be admitted to be true. *Limestone Transit*, 263 NLRB No. 72 (1982) (not reported in Board volumes).

³ Counsel for the General Counsel asserts that art. VI, No. 7, of the parties' collective-bargaining agreement is the governing provision for

make whole Glen Svore by payment to him of the backpay amount opposite his name, with interest thereon computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).⁴

Glen Svore	\$2,634.00
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Asbestos Workers Health and Welfare Fund On behalf of:

Bob Hulen	\$47.50
Gene McCloud	82.00
Lyle McCloud	18.50
Kirk Rosty	63.00
Glen Svore	616.75
Lewis Thomas	410.75

Western States Asbestos Pension Fund On behalf of:

Bob Hulen	\$114.00
Gene McCloud	196.80
Lyle McCloud	764.40
Kirk Rosty	151.20
Glen Svore	1,480.20
Lewis Thomas	985.80

Western States Asbestos Pension Fund (For the Occupational Health and Research Fund) On behalf of:

Bob Hulen	\$ 1.90
Gene McCloud	3.28
Lyle McCloud	12.74
Kirk Rosty	2.52
Glen Svore	24.67
Lewis Thomas	16.43

Western States Asbestos Health Plan On behalf of:

Bob Hulen	\$ 4.75
Gene McCloud	8.20
Lyle McCloud	31.84
Kirk Rosty	6.30
Glen Svore	61.66
Lewis Thomas	41.07

the determination of interest due with regard to the benefit funds. As we do not have the language of the collective-bargaining agreements before us, we leave to the compliance stage this determination and computation.

⁴ The amounts specified in this Order are based on the detailed monthly or quarterly figures set out in the appendixes of the backpay specification, as there is no explanation or apparent justification for the summary figures—which represent higher total amounts due—appearing in par. VIII of the backpay specification.